

## SENATE BILL No. 390

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-10-2; IC 35-33-14.

**Synopsis:** Bail. Provides that an undertaking for bail expires 36 months after the undertaking is posted for the release of a defendant from custody if: (1) the defendant fails to appear as required; and (2) the court fails to make an adjudication concerning the defendant, including refusing to extradite the defendant; during the 36 month period. Requires sureties and bail agents to establish and maintain electronic mail addresses after August 1, 2009. Provides that if a defendant does not appear as provided in a bond and the court orders the bail agent and the surety to surrender the defendant to the court, the clerk may send notice of the order by electronic mail to the bail agent and surety. Reduces the amount of time a surety and bail agent have to produce the defendant or provide a valid reason for the defendant's failure to appear. Reduces the time used to assess late surrender fees against a surety and bail agent. Provides that the court retains late surrender fees instead of the fees being deposited in police pension trust funds and county extradition funds. Specifies that the retained fees must be used by a court to defray the costs of operating the court, including the costs of extraditing criminal defendants and operating diversion programs. Repeals the law establishing county extradition funds.

**Effective:** July 1, 2009.

**Rogers**

January 8, 2009, read first time and referred to Committee on Judiciary.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 390

A BILL FOR AN ACT to amend the Indiana Code concerning bail.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 27-10-2-3 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) An undertaking  
3       is valid if it states:

- 4               (1) the court where the defendant is to appear;  
5               (2) the amount of the bail; and  
6               (3) that it was made before an official legally authorized to take  
7               the bond.

8       (b) A surety remains liable on an undertaking despite:

- 9               (1) any lack of the surety's qualifications as required by section 4  
10              of this chapter;  
11              (2) any other agreement that is expressed in the undertaking;  
12              (3) any failure of the defendant to join in the undertaking; or  
13              (4) any other defect of form or record, or any other irregularity,  
14              except as to matters covered by subsection (a).

15       (c) ~~Any An~~ undertaking ~~written after August 31, 1985; shall expire~~  
16       **expires** thirty-six (36) months after **it the undertaking** is posted for the  
17       release of a defendant from custody ~~This section does not apply to~~  
18       cases in which a bond has been declared to be forfeited; or in which the



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defendant is a fugitive from the jurisdiction after thirty-six (36) months.  
if:

- (1) the defendant fails to appear as required; and
- (2) the court fails to make an adjudication concerning the defendant, including refusing to extradite the defendant; during the thirty-six (36) month period.

SECTION 2. IC 27-10-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) If a defendant does not appear as provided in the bond:

(1) the court shall:

- (A) issue a warrant for the defendant's arrest; and
- (B) order the bail agent and the surety to surrender the defendant to the court immediately;

(2) the clerk shall ~~mail~~ **send** notice of the order **by mail or electronic mail** to both:

- (A) the bail agent; and
- (B) the surety;

at each of the **mailing or electronic mail** addresses indicated in the bonds; and

(3) if the defendant later is arrested or otherwise appears:

- (A) the court shall order that the surety be released from the bond; and
- (B) after the court issues an order under clause (A), the surety's original undertaking shall be reinstated if the surety files a written request for the reinstatement of the undertaking with the court.

This subsection may not be construed to prevent a court from revoking or resetting bail.

(b) The bail agent or surety must:

- (1) produce the defendant; or
- (2) prove within ~~three one~~ hundred ~~sixty-five (365)~~ **eighty (180)** days:

(A) that the appearance of the defendant was prevented:

- (i) by the defendant's illness or death;
- (ii) because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision of the United States or a state; or
- (iii) because the required notice was not given; and

(B) the defendant's absence was not with the consent or connivance of the sureties.

(c) If the bail agent or surety does not comply with the terms of

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subsection (b) within ~~one hundred twenty (120)~~ **sixty (60)** days after ~~the mailing of~~ the notice **is sent as** required under subsection (a)(2), a late surrender fee shall be assessed against the bail agent or surety as follows:

(1) If compliance occurs more than ~~one hundred twenty (120)~~ **sixty (60)** days but not more than ~~one hundred eighty (180)~~ **ninety (90)** days after the ~~mailing of~~ notice **is sent**, the late surrender fee is twenty percent (20%) of the face value of the bond.

(2) If compliance occurs more than ~~one hundred eighty (180)~~ **ninety (90)** days but not more than ~~two one hundred ten (210)~~ **twenty (120)** days after the ~~mailing of~~ notice **is sent**, the late surrender fee is thirty percent (30%) of the face value of the bond.

(3) If compliance occurs more than ~~two one hundred ten (210)~~ **twenty (120)** days but not more than ~~two one hundred forty (240)~~ **eighty (80)** days after the ~~mailing of~~ notice **is sent**, the late surrender fee is fifty percent (50%) of the face value of the bond.

~~(4) If compliance occurs more than two hundred forty (240) days but not more than three hundred sixty-five (365) days after the mailing of notice, the late surrender fee is eighty percent (80%) of the face value of the bond.~~

~~(5)~~ **(4)** If the bail agent or surety does not comply with the terms of subsection (b) within ~~three one hundred sixty-five (365)~~ **eighty (80)** days ~~of after~~ the ~~mailing of~~ notice **is sent as** required under subsection (a)(2), the late surrender fee is eighty percent (80%) of the face value of the bond.

All late surrender fees are due as of the date of compliance with subsection (b) or ~~three one hundred sixty-five (365)~~ **eighty (80)** days after the ~~mailing of~~ notice **is sent as** required under subsection (a)(2), whichever is earlier, and shall be paid by the surety when due. If the surety fails to pay, then the late surrender fees shall be paid by the commissioner as provided in subsection (f).

(d) If the bail agent or surety does not comply with the terms of subsection (b) within ~~three one hundred sixty-five (365)~~ **eighty (80)** days ~~of after~~ the ~~mailing of~~ notice **is sent as** required by subsection (a)(2), the court shall declare forfeited an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the forfeiture, without pleadings and without change of judge or change of venue, and assess against the bail agent or surety all actual costs resulting from the defendant's failure to appear. These costs include jury fees, witness fees, and any other documented costs incurred by the court.

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(e) Proceedings relative to the bond, forfeiture of a bond, judgment on the forfeiture, execution of judgment, or stay of proceedings shall be in the court in which the bond was posted. Costs and late surrender fee assessed against a bail agent or surety under subsection (c) shall be satisfied without further order of the court as provided in subsection (f). The court may waive the late surrender fee or extend the period for payment beyond the statutorily permitted period, or both, if the following conditions are met:

(1) A written request is filed with the court and the prosecutor.

(2) The surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant.

(f) In the case of an insurer, if the fees, costs, or judgment is not paid, then the clerk shall mail the notice to the commissioner. The commissioner shall:

(1) within ten (10) days of receipt of the notice forward a copy by certified mail to the insurer;

(2) forty-five (45) days after receipt of the notice from the clerk, if the commissioner has not been notified by the clerk that the fees or judgment or both have been paid, pay the late surrender fee assessment, costs, and any judgment of forfeiture ordered by the court from funds the insurer has on deposit with the department of insurance;

(3) upon paying the assessment, costs, and judgment, if any, from funds on deposit, immediately revoke the license of the insurer, if the satisfaction causes the deposit remaining to be less than the amount required by this article; and

(4) within ten (10) days after revoking a license, notify the insurer and the insurer's agents and the clerk of each county in Indiana of the revocation and the insurer shall be prohibited from conducting a bail bond business in Indiana until the deposit has been replenished.

(g) The notice mailed by the clerk to the commissioner pursuant to the terms of subsection (f) shall include:

(1) the date on which the defendant originally failed to appear as provided in the bond;

(2) the date of compliance with subsection (b), if compliance was achieved within ~~three~~ **one** hundred ~~sixty-five (365)~~ **eighty (180)** days after ~~the mailing of~~ the notice **is sent as** required by subsection (a)(2);

(3) the amount of the bond;

(4) the dollar amount of the late surrender fee due;

(5) the amount of costs resulting from the defendant's failure to

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1 appear; and

2 (6) if applicable, the dollar amount of the judgment of forfeiture  
3 entered by the court.

4 (h) Any surety on a bond may appeal to the court of appeals as in  
5 other civil cases without moving for a new trial, and on the appeal the  
6 evidence, if any, shall be reviewed.

7 (i) ~~Fifty percent (50%) of~~ **The court shall retain** the late surrender  
8 fees collected under this chapter. ~~shall be deposited in the police~~  
9 ~~pension trust fund established under IC 36-8-10-12 and the remaining~~  
10 ~~fifty percent (50%) shall be deposited in the county extradition fund~~  
11 ~~established under IC 35-33-14. Late surrender fees retained under~~  
12 **this subsection shall be used by a court to defray the costs of**  
13 **operating the court, including the costs of extraditing criminal**  
14 **defendants and operating diversion programs.**

15 (j) After August 1, 2009, each surety and bail agent shall  
16 establish and maintain an electronic mail address for purposes of  
17 conducting business under this section.

18 SECTION 3. IC 35-33-14 IS REPEALED [EFFECTIVE JULY 1,  
19 2009].

20 SECTION 4. [EFFECTIVE JULY 1, 2009] (a) Any funds  
21 remaining in a county extradition fund established by IC 35-33-14,  
22 as repealed by this act, on June 30, 2009, shall be transferred on  
23 July 1, 2009, to the general fund of the county in which the county  
24 extradition fund was established.

25 (b) This SECTION expires July 2, 2009.

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